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**\*\*\*EMERGENCY\*\*\***

**IN THE SUPREME COURT OF THE STATE OF ALASKA**

HONORABLE MICHAEL J.  
DUNLEAVY, in his official capacity  
as Governor for the State of Alaska,

Appellant,

v.

THE ALASKA LEGISLATIVE  
COUNCIL, on behalf of THE  
ALASKA STATE LEGISLATURE,

Appellee.

Supreme Court No.:

Trial Court Case No.: 1JU-20-00938 CI

**\*\*\*EMERGENCY\*\*\***

**MOTION TO EXPEDITE APPEAL**

Under Appellate Rule 504, Governor Michael J. Dunleavy asks the Court to expedite consideration of this appeal, which is a challenge to a superior court decision concluding that the Alaska Legislature’s total failure to take up a confirmation vote on the governor’s appointments of ninety-four executive branch officials constitutes a lawful rejection of those appointees.<sup>1</sup> The superior court’s decision concludes that twin statutory provisions declaring that gubernatorial appointments may be deemed declined for confirmation by mere legislative inaction are constitutional, and thus that the ninety-four individuals who Governor Dunleavy appointed in 2020 but who never received a confirmation vote were, in fact, rejected for confirmation. It also concludes that even

<sup>1</sup> App. A (Order denying defendant’s motion for summary judgment and granting plaintiff’s cross-motion for summary judgment, February 18, 2021).

though the legislature never acted on the appointments, the governor is nevertheless broadly prohibited from appointing those individuals to office under the recess appointment authority of Article III section 27. Because this same scenario may be repeated this year—as well as in the longer term future—and because the court’s decision threatens to profoundly disrupt and interfere with the functioning of state government and has significant consequences not just for the governor’s executive authority but also for his ability to implement the will of the electorate and appoint qualified officials to carry out the business of the executive branch, the governor is seeking expedited review of this matter.

The Alaska Legislature is now over one-third of the way through its statutorily imposed ninety day session, currently set to conclude on April 18, 2021. This means that barring this Court’s timely review, if the legislature again adjourns like it did in 2020 without going into joint session and taking up a confirmation vote, an entire slate of gubernatorial appointees presented for confirmation—now roughly 181 executive branch officials, including cabinet members and members of various boards and commissions—will be unceremoniously removed from office.<sup>2</sup> Such a sweeping move does far more harm than simply infringing on the governor’s executive authority. It also significantly jeopardizes the governor’s ability to administer and supervise the executive branch, impedes the governor’s ability to implement the executive branch policy that Alaskans elected the governor to carry out, deprives well-meaning Alaskan public officials of their

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<sup>2</sup> App. B (Affidavit of Gina Ritacco).

right to secure an up-or-down vote—and ultimately deters Alaskans from public service at a time when their services are most needed. This appeal ultimately concerns a critical separation of powers question involving the executive and legislative branches of government with significant implications for the governor, the Alaska Legislature, and everyday Alaskans, and therefore merits expedited review.

**Because the Alaska Legislature is scheduled to adjourn under statute on April 18, 2021, the governor requests this Court issue a decision by April 12, 2021.**

With each day of the regular session that passes, the governor and his appointees, as well as the many individuals those appointees supervise and serve, are left in limbo—unaware of whether they will receive a confirmation vote or whether they may be simply ejected from office in less than two months’ time. The governor and his staff, who have already devoted significant energies and resources to filling vacant positions, have no way of knowing whether they will need to re-double their efforts, and find new appointees for nearly 200 offices. And the legislature is left currently believing it is free to do nothing at all, and that otherwise validly serving gubernatorial appointees will simply be removed from office—in this and every future legislative session.

An expedited decision is essential to eliminate this confusion, allow for efficient and effective administration of state government, provide clarity to both branches of government about the limits of legislative (and executive) authority, and provide for prudent state planning. If this Court reverses the superior court, the Alaska Legislature will need time to call themselves into joint session and plan for a confirmation vote on the slate of nominees. If this Court affirms the superior court’s decision, however, the

governor will need time to undertake the herculean task of filling a massive number of important executive branch positions with new, eligible, interested, and qualified Alaskans who are both able and willing to serve. Further, time is essential to provide for a smooth transition between outgoing and incoming leadership, to allow for some opportunity for transitional planning at the many agencies and boards that will undergo significant disruption, and to give the state's many boards and commissions—such as the State Medical Board, the Board of Nursing, and others—who may be threatened by lack of a quorum or an outright and total loss of membership, to triage critical matters.<sup>3</sup> It will also allow any outgoing officials affected by a potential adverse ruling—such as the Attorney General, the Commissioner of Revenue, the Public Defender, and others—to provide for an orderly and smooth transition for their agency personnel, and help effectuate continuity of government operations.

**Because Governor Dunleavy respectfully requests this Court issue a decision by April 12, 2021,** the governor has proposed a briefing schedule that will allow this Court to schedule oral argument on or about April 2, 2021, or thereafter, and to issue a decision as quickly as possible thereafter. Counsel for Governor Dunleavy has contacted appellees' counsel, and they did not have authority to agree to this proposed schedule, but counsel assured she would reach out to her clients promptly.

Governor Dunleavy also respectfully requests this Court grant full-court consideration if the assigned justice is inclined to deny this motion. Under Appellate Rule

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<sup>3</sup> App. B.

503(h)(20(B), the governor may receive full-court reconsideration of an individual justice's decision. Because the governor intends to seek full-court reconsideration if his motion for expedited review is denied, and given the governor's interest in expediting this appeal as a result of the significant impacts the superior court's decision will have on executive branch planning and operations, the governor requests full-court reconsideration without further delay. The governor therefore asks that if this motion is denied by an individual justice, the justice refer this motion to the full court under Appellate Rule 503(g).

The grounds in support of this emergency motion were not submitted to the superior court because this is a motion to expedite an appeal of the superior court's decision on summary judgment and forthcoming final judgment, which is expected within days. The superior court, however, recognized the time sensitive nature of this request and expedited its own review of this matter in order to allow the parties time to bring this matter before the Court as quickly as possible.

This motion is supported by the attached affidavit of counsel and written statement of facts.

#### **CONTACT INFORMATION OF COUNSEL**

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